

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.3748 of 2016

Date of Reserving the Judgment	Date of Pronouncing the Judgment
23.01.2017	01.02.2017

1.Shanmugam
S/o.Veerabhadran

Rajendran (Died)
S/o.Nataraja Devar

.. Applicants/Petitioner

-Vs.-

1.Vedarathinam
S/o.Amirthalingam

2.Dhanabakkiam
W/o.Amirthalingam

3.Karthikeyan
S/o.Amirthalingam

4.Rajkumar
S/o.Amirthalingam

5.Arasumani
S/o.Chockalingam
(Former Executive Officer)
Vedaranyeswara Swami Devasthanam
116-V IOB Colony, Gandhi Nagar,
Thirunelveli - 8.

.. Respondents/Respondents

Prayer:

Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the decree and order dated 29.01.2016 made in E.A.No.8 of 2013 in E.P.No.7 of 2012 in O.S.No.363 of 1984 on the file of the learned District Munsif cum Judicial Magistrate, Vedaranyam.

For Petitioners : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.G.Nagarajan

For Respondents : Mr.A.Muthukumar, for R1

ORDER

The present Civil Revision Petition has been filed challenging the fair and decree order dated 29.01.2016 made in E.A.No.8 of 2013 in E.P.No.7 of 2012 in O.S.No.363 of 1984 on the file of the learned District Munsif cum Judicial Magistrate, Vedaranyam, wherein the application filed under Section 47 CPC came to be dismissed.

2.Heard, Mr.AR.L.Sunderasan, learned Senior Counsel appearing for the revision petitioner and Mr.A.Muthukumar, learned counsel appearing for the first respondent.

3.The learned Senior Counsel appearing for the revision petitioner would submit that the suit properties originally belong to Arulmighu

Vedaranyeswara Swami Devasthanam, Vedaranyam and now, the properties are in possession and enjoyment of the petitioner. The petitioner had entered into a rental agreement with the temple authorities on 20.09.1989 and he has been recorded as cultivating tenant. Further, the petitioner had been regularly paying the lease amount to the temple authorities. While so, one Amirthalingam had filed a suit in O.S.No.363 of 1984 against the Hereditary Trustee of Arulmighu Vedaranyeswara Swami Devasthanam and one Fareedha Begum for permanent injunction in respect of the suit scheduled property and the said suit was decreed on 25.09.1987. When that being so, the legal representatives of the said Amirthalingam filed E.P.No.7 of 2012 in O.S.No.363 of 1984 against the revision petitioner and the 5th respondent for disobedience of the order passed in O.S.No.363 of 1984. In the said proceeding, the revision petitioner and the 5th respondent filed an application in E.A.No.8 of 2013 under Section 47 CPC stating that they were not the party to the suit in O.S.No.363 of 1984 and hence, the order of permanent injunction granted in the said suit will not bind them. However, the said application came to be dismissed, as against which the present Civil Revision Petition has been preferred.

4.The learned Senior Counsel appearing for the petitioner would further contend that the executing Court had incorporated Section 47 CPC in its order and held that the petitioners therein are neither the party to the suit nor

the legal heirs or their representatives and hence, the application preferred under Section 47 CPC is not maintainable and thus, dismissed the said application, which is against the law. Hence, he prayed for setting aside the said order.

5. On the other hand, the learned counsel appearing for the first respondent would submit that the executing Court had incorporated Section 47 of CPC in its order which specifically reads that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not be a separate suit. But, in the instant case, the petitioners are neither the defendants nor the legal representatives. In such circumstances, the executing Court had rightly held that the first defendant in the suit viz., Hereditary Trustee of Arulmighu Vedaranyeswara Swami Devasthanam having not filed the application under Section 47 CPC, the same is not maintainable. Further, it is pertinent to note that the second defendant in the suit viz., Fareedha Begum nor her legal representatives have filed the application under Section 47 CPC. Thus, the learned counsel would contend that the executing Court had rightly dismissed the application preferred in E.A.No.8 of 2013 in E.P.No.7 of 2012 in O.S.No.363 of 1984 and hence, he prayed for dismissal of the Civil Revision Petition.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. It would be appropriate to incorporate Section 47 of Civil Procedure Code:

“47. Questions to be determined by the Court executing decree.-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) omitted by Act 104 of 1976. effective from 1-2-1977

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court”

8. Considering the facts of the present case, in the light of the above proviso, in the instant case, the revision petitioner is neither the defendant nor the legal representative of the judgment debtor. So, the Executing Court has rightly held that the petitioner herein is neither the legal heir or legal

representative of Arulmighu Vedaranyeswara Swami Devasthanam nor the legal heir or legal representative of Fareedha Begum and therefore, he is not entitled to file an application under Section 47 CPC. Hence, I am of the considered view that the executing Court had rightly dismissed the application preferred in E.A.No.8 of 2013 in E.P.No.7 of 2012 in O.S.No.363 of 1984 and I do not find any illegality or irregularity in the order passed by the executing Court.

9.In fine, the Civil Revision Petition is dismissed as devoid of merits. The fair and decreetal order passed in E.A.No.8 of 2013 in E.P.No.7 of 2012 in O.S.No.363 of 1984 on the file of the learned District Munsif cum Judicial Magistrate, Vedaranyam is hereby confirmed. No costs.

01.02.2017

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Index:Yes/No

To

District Munsif cum Judicial Magistrate,
Vedaranyam

R.MALA, J.

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Pre-Delivery order made in
C.R.P.(NPD),No.3748 of 2016

Dated : 01.02.2017

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